

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55344; File No. SR-NASDAQ-2006-057]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 2 Thereto To Trade Certain CurrencyShares Trusts Pursuant to Unlisted Trading Privileges

February 23, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 12, 2006, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On January 29, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. On February 16, 2007, Nasdaq filed Amendment No. 2 to the proposed rule change.³ This order provides notice of the proposed rule change, as amended, and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq seeks to continue trading pursuant to unlisted trading privileges (“UTP”) certain securities whose value is linked to the value of one or more non-U.S. currencies (“Currency Trust Shares”). The securities consist of shares (“Shares”) in the following currency trusts (“Trusts”):

- CurrencyShares™ Australian Dollar Trust, which issues Australian Dollar Shares;
- CurrencyShares™ British Pound Sterling Trust, which issues British Pound Sterling Shares;
- CurrencyShares™ Canadian Dollar Trust, which issues Canadian Dollar Shares;
- CurrencyShares™ Euro Trust, which issues Euro Shares;
- CurrencyShares™ Japanese Yen Trust, which issues Japanese Yen Shares;
- CurrencyShares™ Mexican Peso Trust, which issues Mexican Peso Shares;

- CurrencyShares™ Swedish Krona Trust, which issues Swedish Krona Shares; and
- CurrencyShares™ Swiss Franc Trust, which issues Swiss Franc Shares.

The text of the proposed rule change is available on Nasdaq’s Web site at <http://nasdaq.complinet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

II. Self Regulatory Organization’s Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

Nasdaq is proposing to trade the Shares on a UTP basis. Nasdaq is submitting this filing because its current listing standards do not extend to Currency Trust Shares. However, systems operated by Nasdaq and its affiliates currently trade the Shares on an over-the-counter basis as facilities of NASD. The filing will allow Nasdaq to continue trading the Shares as an exchange.

The Commission previously approved the original listing and trading of the Shares on the New York Stock Exchange (“NYSE”).⁴

The Australian Dollar Shares represent units of fractional undivided beneficial interest in and ownership of the Australian Dollar Trust. The investment objective of the Australian Dollar Trust is for the Australian Dollar Shares to reflect the price of the Australian dollar.

The British Pound Sterling Shares represent units of fractional undivided beneficial interest in and ownership of

the British Pound Sterling Trust. The investment objective of the British Pound Sterling Trust is for the British Pound Sterling Shares to reflect the price of the British pound.

The Canadian Dollar Shares represent units of fractional undivided beneficial interest in and ownership of the Canadian Dollar Trust. The investment objective of the Canadian Dollar Trust is for the Canadian Dollar Shares to reflect the price of the Canadian dollar.

The Euro Shares represent units of fractional undivided beneficial interest in and ownership of the Euro Trust. The investment objective of the Euro Trust is for the Euro Shares to reflect the price of the euro.

The Japanese Yen Shares represent units of fractional undivided beneficial interest in and ownership of the Japanese Yen Trust. The investment objective of the Japanese Yen Trust is for the Japanese Yen Shares to reflect the price of the Japanese yen.

The Mexican Peso Shares represent units of fractional undivided beneficial interest in and ownership of the Mexican Peso Trust. The investment objective of the Mexican Peso Trust is for the Mexican Peso Shares to reflect the price of the Mexican peso.

The Swedish Krona Shares represent units of fractional undivided beneficial interest in and ownership of the Swedish Krona Trust. The investment objective of the Swedish Krona Trust is for the Swedish Krona Shares to reflect the price of the Swedish krona.

The Swiss Franc Shares represent units of fractional undivided beneficial interest in and ownership of the Swiss Franc Trust. The investment objective of the Swiss Franc Trust is for the Swiss Franc Shares to reflect the price of the Swiss franc.

The Trusts are not registered investment companies under the Investment Company Act of 1940. Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq’s existing rules governing the trading of equity securities, including Nasdaq Rule 4630.⁵ The primary trading hours for the Shares on Nasdaq would be 9:30 a.m. to 4:15 p.m. (EST). The Shares may also be traded in a pre-market session from 7 a.m. to 9:30 a.m. (EST) and a post-

⁴ Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR-NYSE-2007-03) (approving listing and trading of Japanese Yen Shares); Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE-2005-65) (approving listing and trading of Euro Shares); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR-NYSE-2006-35) (approving listing and trading of the six additional CurrencyShares Trusts).

⁵ On November 16, 2006, the Commission approved a rule filing by Nasdaq to adopt Rule 4630, a new rule governing the trading of and surveillance procedures applicable to Commodity-Based Trust Shares. See Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR-NASDAQ-2006-009). Because foreign currency is included within the rule’s definition of a commodity, Rule 4630 is applicable to Currency Trust Shares.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 superceded the original filing and Amendment No. 1.

market session from 4:15 p.m. to 8 p.m. (EST).

Quotations for and last sale information regarding the Shares is disseminated through the Consolidated Tape System. The net asset value ("NAV") and NAV per Share for each Trust are calculated by The Bank of New York as the Trustee for each Trust. To calculate the NAV, the Trustee adds the total value of Trust assets, including accrued receivables, and then subtracts Trust liabilities, including accrued expenses. The Trustee determines the NAV per Share by dividing the NAV of a Trust by the number of outstanding Shares. The NAV per Share is published on the Trusts' Web site at <http://www.currencyshares.com> (to which Nasdaq would provide a link from its <http://www.nasdaq.com> Web site). The Trusts' Web site is publicly accessible at no charge and also contains the spot price for each applicable foreign currency, including the bid and offer and the midpoint between the bid and offer for the foreign currency spot price, updated at least every 15 seconds; an intraday indicative value ("IIV")⁶ per Share calculated by multiplying the indicative spot price of the currency by the quantity of the currency backing each Share, at least every 15 seconds, and for certain Shares on a five-to-ten-second delayed basis; and other pertinent information about the value of a Share.⁷

Nasdaq would halt trading in the Shares of a Trust under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares also would be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the IIV.⁸

⁶ The IIV of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value, or IIV associated with the trading of exchange-traded funds.

⁷ The Trusts' Web site's foreign currency spot price is provided by FactSet Research Systems (<http://www.factset.com>). Nasdaq would provide a link to the Trusts' Web site. The NYSE has stated that FactSet Research Systems is not affiliated with the Trusts, their Trustee, their sponsor, other entities involved in distributing or holding deposits associated with the Trusts, or the NYSE. In the event that the Trusts' Web site should cease to provide currency spot price information from an unaffiliated source and the IIV of the Shares, NYSE has stated that it would halt trading in the Shares and commence delisting proceedings for the Shares. Nasdaq would also halt trading in the Shares in the event that NYSE halts trading because the spot price and/or IIV is no longer available, or if NYSE delists the Shares for other reasons.

⁸ See Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-050).

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through NASD facilities operated by Nasdaq is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular. After Nasdaq begins to trade the Shares as an exchange, NASD, on behalf of Nasdaq, will continue to surveil Nasdaq's trading of the Shares. Nasdaq's transition to trading the Shares as an exchange will not result in any change in the surveillance process with respect to the Shares.⁹

In connection with trading the Shares as an exchange, Nasdaq will issue an information circular ("Circular") that will discuss the following: (1) The special characteristics and risks of trading the Shares; (2) the procedures for purchases and redemptions of Shares; (3) applicable Nasdaq rules including suitability rules; (4) how information regarding the IIV is disseminated; and (5) trading information. The Circular will also refer members to language in the Registration Statements regarding prospectus delivery requirements for the Shares, and note to members their obligations regarding prospectus delivery. Nasdaq notes that investors purchasing Shares directly from the Trusts will receive a prospectus. Nasdaq members purchasing Shares from the Trusts for resale to investors will deliver a prospectus to such investors.

In addition, the Circular will reference that the Trusts are subject to various fees and expenses described in the Registration Statements. The Circular will explain that if the Trusts are required to sell currency to pay the Trusts' expenses, the amount of foreign currency required to create a basket of Shares issued by the Trusts or to be delivered upon a redemption of a basket of Shares may gradually decrease over time. If this is done when the price of the currency is relatively low, the selling of the currency could adversely affect the value of the Shares. Finally, the Circular will also reference the fact that there is no regulated source of last-sale information regarding currency and that the Commission has no jurisdiction over the trading of currency.

⁹ Surveillance of all trading on NASD facilities operated by Nasdaq, including the trading of Shares, is currently being conducted by NASD. When Nasdaq begins to trade the Shares as an exchange, NASD will surveil trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹² because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposal were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2006-057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 240.12f-5.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-057 and should be submitted on or before March 26, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁵ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on

another exchange.¹⁶ The Commission notes that it previously approved the listing and trading of the Shares on NYSE.¹⁷ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,¹⁸ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Nasdaq has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Nasdaq's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the facilities of the Consolidated Tape Association. Furthermore, the Trusts' Web site, which is publicly accessible at no charge, provides the IIV at least every 15 seconds, and for certain Shares on a five-second to ten-second delayed basis, throughout Nasdaq's trading sessions. In addition, Nasdaq has represented that, if the listing market halts trading when the IIV is not being calculated or disseminated, Nasdaq would halt trading in the Shares. Nasdaq would follow the procedures with respect to trading halts set forth in Nasdaq Rules 4120 and 4122.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Nasdaq would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Nasdaq has made the following representations:

1. Nasdaq's surveillance procedures are adequate to address any concerns

¹⁶ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

¹⁷ See *supra* note 4.

¹⁸ 17 CFR 240.12f-5.

¹⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

about the trading of the Shares on Nasdaq.

2. Nasdaq will issue an information circular that will discuss the special characteristics and risks of trading the Shares, the procedures for the purchases and redemptions of the Shares, applicable Nasdaq rules including suitability rules, how information regarding the IIV is disseminated, and trading information.

3. In connection with trading the Shares as an exchange, Nasdaq will issue an information circular that will refer members to the language in the Registration Statements regarding prospectus delivery requirements for the Shares and will also note to Nasdaq members their obligations regarding prospectus delivery. Investors purchasing Shares directly from the Trusts will receive a prospectus. In addition, Nasdaq members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

This approval order is conditioned on the Nasdaq's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on Nasdaq pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-NASDAQ-2006-057), as amended, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Florence E. Harmon,

Deputy Secretary.

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¹³ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78l(f).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).